The learned District Judge found that on the evidence it would be reasonable to make the order for possession for refused the application as he was not satisfied that suitable alternative accommodation for the respondent was available.

Mr. Mallal has said everything that could be said on appellant's behalf but the evidence is clear that respondent is making some use of all the accommodation at his disposal for purposes of his business and no alternative accommodation has been suggested. The only suggestion appellant makes is that respondent should rearrange his goods and his operations so as to confine them in a smaller space and leave the premises in dispute free for appellant.

The learned District Judge inspected all respondent's business premises and was not satisfied that suitable alternative accommodation to the premises in dispute was available.

On the evidence I cannot see how he could have come to any other conclusion.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Mallal & Namazie; Braddell Bros.*

REX v. NG HIONG.

[A. Cr. J. (Gordon-Smith Ag. C.J.) October 15, 1948]

[Singapore — Special Case No. 5 of 1948]

Common Gaming Houses Ordinance (Cap. 30), ss. 4, 6, 7, 9, 14 and 15 — Presumptions under the Ordinance — Charge of being in possession of public lottery ticket — Whether it is necessary that there should be a search warrant.

In this case it appeared that the accused was stopped by a Police corporal on suspicion and searched. On him were found what was subsequently proved to be two chap-ji-ki slips and he was later charged for possession of them. The learned Magistrate did not call on the accused for his defence but acquitted him and stated a case. The case stated was that (a) Possession of the said staking slips did not amount to buying tickets in a public lottery, (b) the failure to obtain a search warrant vitiated the whole prosecution in that no presumption either under s. 7(2) or under s. 9 Cap. 30 could arise in the circumstances.

Held: (1) the presumption in s. 7(2) of the Common Gaming Houses Ordinance has no reference to any search warrant and arose when lottery tickets are found on the accused, as in this case; (2) the learned Magistrate therefore erred in not calling on the accused for his defence.

SPECIAL CASE STATED.

A. V. Winslow (D. P. P.) for the Crown.

B. H. Chia, Amicus Curiae.

Cur. Adv. Vult.

Gordon-Smith Ag. C.J. : — This decision is on a case stated by the Magistrate of the Second Police Court under the provisions of the Criminal Procedure Code section 317. It raises matters of some importance and concerns the Common Gaming Houses Ordinance (Cap. 30).

The accused was charged under section 7(1) in that on the 3rd May, 1948 at 9.25 a.m. at the junction of Duku Road and Everitt Road he did have in his possession two chap-ji-ki public lottery staking slips. The undisputed facts in the case are that the accused was in conversation with another Chinese when a Police corporal, on routine patrol, being somewhat suspicious of the accused, stopped and searched him. On him he found what was subsequently proved to be two chap-ji-ki slips and he was charged later, as set out above.

At the trial a chap-ji-ki expert gave evidence describing this kind of lottery and the system on which it is run daily and stated that these two paper slips were tickets shewing stakes of $2.00 and $4.00 respectively. There was no date on them because, so the expert said, the lottery is run daily and he could not say whether the money indicated had been actually staked (paid over) or not. Apparently the lottery is run on a system of mutual trust.

The Magistrate did not call on the accused for his defence, acquitting him and agreeing to state a case.

The case stated is that :—

(a) possession of the said staking slips did not amount to buying tickets in a public lottery;

(b) the failure to obtain a search warrant vitiated the whole prosecution, in that no presumption either under s. 7(2) Cap. 30 or under s. 9 Cap. 30, could arise, in the circumstances.

It is obvious that the proceedings having nothing whatsoever to do with a common gaming house, no presumptions arose under sections 14 and 15 of the Ordinance.

It is similarly obvious that no presumption arises by virtue of section 9 of the Ordinance.

The only possible presumption is that contained in section 7(2).

Section 7 reads as follows :—

7. (1) Any person who, either personally or by an agent, pays or deposits any money or money's worth to or with any person concerned in the business of a common gaming house, as a stake or for or in respect

of any event or contingency connected with a public lottery or buys a lottery ticket, shall be liable to a fine not exceeding twenty-five dollars.

(2) A person in whose possession a lottery ticket is found shall be presumed, until the contrary is proved, to have bought the same.

(3) Every lottery ticket brought or introduced into or being within the Colony shall be forfeited to the Crown, and it shall be the duty of every police officer or other public servant to seize every such ticket wherever found.

Dealing with the first point, there was definite and unrebutted evidence that the betting slips found on the accused were lottery tickets. Under sub-section (2) the presumption arose that the accused had bought and paid for them, until the contrary was proved. There was, therefore, a *prima facie* case against the accused under sub-section (1).

Section 4(a) and (b) and section 6 refer to gaming house and have nothing wnatsoever to do with lotteries, except as regards a gaming house being used for the purpose of a public lottery. Similarly the presumptions set out in sections 14 and 15 only apply to gaming houses where a search warrant has been issued and such fact is in evidence (unless a Justice of the Peace himself enters the house and gives evidence to such effect). The presumption in section 7(2) has no reference to any search warrant and arises when lottery tickets are found on an accused, as in this case.

In my opinion the learned Magistrate erred in this respect and should have called on the accused for his defence. In effect section 7(1) says that "any person who either personally or by an agent ...." buys a lottery ticket, shall be liable to a fine of $25.00. Section 7(2) says that any person in whose possession a lottery ticket is found (and nothing is said about a search warrant) shall be presumed, until the contrary is proved, to have bought the same.

The accused has been acquitted and discharged and I think that, as set out above, the learned Magistrate erred in not calling on him for his defence. What that defence would have been is only a matter of conjecture and it is not for me to advise as to what evidence might have rebutted the presumption that had arisen against him.

Under the circumstances I make no order apart from reversing the determination in respect of which the Special Case has been stated.

No order

CHOP NGOH SENG v. ESMAIL & AHMAD BROS.

[O. C. J. (Gordon-Smith Ag. C.J.) October 27, 1948]

[Singapore — Civil Suit No. 190 of 1947]

Contract — Sale of specified goods — Subject matter of contract not in existence — Impossibility of performance.

In this case the plaintiffs claimed the refund of $6,000 being a deposit paid by them on account of the purchase price of fifty bales of gunny bags. The parties had entered into a written contract for the supply of fifty bales of gunny bags to be delivered per s.s. "Mausang," due in Singapore on or before a specified date. When the s.s. "Mausang" which in fact sailed from Calcutta the day after the contract was signed, arrived in Singapore, the fifty bales of gunny bags were not on board. Neither party to the contract was aware of this fact at the time the contract was entered into.

Held: the contract in this case was for the sale of specified goods on a specified ship arriving at Singapore on or about a specified date and as the goods were not on board the ship, the contract was impossible of performance and was therefore void.

Case referred to:—

(1) *Barrow v. Phillips* (1929) 1 K.B. 574.

CIVIL SUIT.

H. R. Wilson for the plaintiffs.

D. Murphy for the defendants.

Cur. Adv. Vult.

The facts sufficiently appear from the judgment.

Gordon-Smith Ag. C.J. : — In this suit by their statement of claim, the plaintiffs claimed the refund of $6,000 being a deposit paid by them on account of the purchase price of $30,000 in respect of fifty bales of gunny bags, a written contract of sale having been entered into on the 24th May, 1947.

As the whole issues are bound up with the terms of this written contract as to whether the same had been avoided or whether there had been a breach thereof by the plaintiffs, it is necessary to examine the terms of the contract closely. The defendants had counterclaimed for $4,400 damages for breach of contract.

The contract is dated the 24th May, 1947 and is embodied in a printed form with addition in manuscript and rubber stamps. It is signed by the parties and sets out the relevant price of the goods and specifies the same, the receipt of the $6,000 deposit is acknowledged and payment was to be in cash. There is no dispute arising as to terms of the contract.

Under the "Remarks" heading there is written "shipment ex s.s. Mausang from Calcutta expected here on or about 6th June, 1947. Buyers are bound to take delivery if shipment delayed and arrived late".